Cook & Woldson v. *Gallatin Ry. Co.*, 28 Mont. 509; *Gurske* v. *Kelpin*, 61 Neb. 517. But a line of cases hold that where the plaintiff is a non-resident or is insolvent, equity will allow a set-off which would not be available at law. *Fitzgerald* v. *Wiley*, 22 App. D. C. 329, citing *North Chicago Rolling Mill Co.* v. *St. Louis Ore & Steel Co.*, 152 U. S. 596, in which latter case the claim was unliquidated, and so could not be set-off, but equity intervened to ascertain the amount and ordered it set-off in order to prevent the injustice of compelling another suit in another court. In *Bibb Land-Lumber Co.* v. *Lima Machine Works*, 104 Ga. 116, the same principle is stated to have been laid down in Georgia in *Lee* v. *Lee*, 31 Ga. 26; *Harwood* v. *Andrews*, 71 Ga. 784; and *Barrow* v. *Mallory Bros. & Co.*, 89 Ga. 76. STORY, EQUITY (Ed. 2, p. 1437a) states the rule that equity usually follows the law in regard to set-offs arising after suit is begun, but equities "too various for enumeration" may arise to call for equitable relief. That insolvency is a ground seems undoubted. That nonresidence is also a ground is held in cases cited above and in *Carson* v. *Carson*, 59 Ky. (2 Metc.) 96. *Contra*: *Smith* v. *Wash. Gaslight Co.*, 31 Md. 12; *Isenburger* v. *Hotel Reynolds Co.*, 177 Mass. 455. The principal case seems to define one of the "various reasons" and to eniarge the scope of the equitable jurisdiction, for here the defendant had an office, an agent, and a large stock of goods within the jurisdiction, so that the usual ground for jurisdiction in cases where the party is a non-resident does not apply. This broader application of equity jurisdiction is to be favored as it tends to do away with multiplicity of suits, settles all claims in one action, and gives substantial justice in many instances where the second suit would avail the plaintiff nothing.

EQUITY—INJUNCTION—TRADE SECRETS. The plaintiff company is a manufacturer of oxygen for commercial uses, and hired defendant as its servant, by a contract of employment, which is about to expire, providing that the defendant shall not divulge trade secrets. Defendant has already signed a contract to work for another company and has agreed to manufacture commercial oxygen. Plaintiff seeks to enjoin defendant from communicating to his new employer the specific method of manufacturing such oxygen used by plaintiff. *Held* injunction not granted. *S. S. White Dental Manufacturing Co.* v. *Mitchell* (1911), 188 Fed. 1017.

The general rule is that employees of one having a trade secret, who are under express contract or a contract implied from their confidential relations to their employer, not to disclose the secret, will be enjoined from divulging or using the same to the injury of their employer, whether before or after they have left his employ, 22 CYC. 843; *Stone et al* v. *Goss et al.*, 65 N.J. Eq. 756, 55 Atl. 736. The mere fact that the defendant denies his intention to do the act is not sufficient ground for denying the injunction. On the other hand there must be actual or probable injury. In the principal case the court denies the injunction, relying on the statement of the defendant that he does not intend to divulge the secret, and upon the fact that the defendant's new employment, where the secret of the plaintiff would naturally be called into use, is in another jurisdiction, where an injunction would be ineffective. The

court says that an injunction will not be issued as a threat, because the defendant will still be under obligations not to divulge, even when the contract of employment with the plaintiff has been completed.

EVIDENCE—IMPEACHMENT OF DYING DECLARATION.—Plaintiff in error was convicted of murder in the first degree. Upon the trial the dying declaration of the deceased was introduced by the prosecution without objection. Certain statements made by the deceased prior to, and inconsistent with, his dying declaration were then offered on the part of the defendant. These statements were objected to by the district attorney upon the ground that they were hearsay, and that the proper foundation for their introduction had not been laid. The objection was sustained and the testimony was excluded. *Held,* it was competent for the defendant to introduce evidence tending to show that the deceased had made statements out of court, after he had received his mortal wound, inconsistent with his dying declaration, and the exclusion of such statements was reversible error. *Salas* v. *People,* (Colo. 1911), 118 Pac. 992.

The rule adopted by the court that a dying declaration may be impeached by showing that the person making it has made other statements inconsistent therewith, is held by many courts. *Carver* v. *U. S.,* 164 U. S. 694, *Gregory* v. *State,* 140 Ala. 16, *State* v. *Lodge,* 9 Houst. 542, *Allen* v. *Com.,* 134 Ky. 110, *State* v. *Charles,* 111 La. 933. But GARRIGUES, J., who dissented in the principal case, presents a very able argument in favor of the contrary doctrine. The law is thoroughly established that evidence cannot be introduced showing that a witness at some other time, when not under oath, made statements inconsistent with testimony, without first laying the foundation therefor by interrogating the witness himself as to whether he ever made such inconsistent statements or not. *Janes* v. *People,* 44 Colo. 535. The death of the witness does not dispense with the general rule in such cases requiring a foundation to be properly laid. *Mattox* v. *U. S.,* 156 U. S., 237, *Stacy* v. *Graham,* 14 N. Y. 492, *Runyan* v. *Price,* 15 Ohio St. 1. "It necessarily follows," concludes the judge, "if there is no such exception, that such statements, not made under oath, or *in extremis,* are purely hearsay, and not admissible to impeach a dying declaration. * * An exception to a general rule should never be created where it would simply shift the hardship from one party to another. If established, an impeaching witness could with impunity swear to any statement whatever, without fear of contradiction. Those with long practical experience in criminal trials know that to recognize such an exception will invite fraud, corruption, perjury, and subornation of perjury in our courts." The hearsay rule rejects assertions offered testimonially which have not been in some way subjected to the tests of cross examination and oath. *Fabrigas* v. *Mostyn,* 20 How. S. Tr. 135, *Marshall* v. *Chi. etc. R. Co.* 48 Ill 475. The dying declaration is an exception to this rule. *Wright* v. *Littler,* 3 Burr. 1244, *Campbell* v. *State,* 11 Ga. 353. If, therefore, the dying declaration is admitted but the inconsistent statements are rejected, since by hypothesis the statements in the dying declaration have not been subject to cross-examination, the law, if it insisted on requiring the preliminary question, would deprive the